IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.22 OF 2006

Kalyan Dombivli Municipal Corpn. ..Applicant.

V/s.

Shri Rashid Shaikh Ahmed & Ors. ..Respondents.

Mr.A.S.Rao for applicant.

CORAM: A.M.KHANWILKAR,J

DATE : FEBRUARY 14, 2006.

P.C. :

1. Heard counsel for the applicant.

2. This revision application takes exception to the Judgment and Order passed by the Joint Civil Judge, J.D., Kalyan dated 28th November, 2005 on the application filed by the applicant Exh.13 in Regular Civil Suit No.321 of 2005, praying that the preliminary issue of jurisdiction of the Civil Court to try and entertain the subject matter of the suit be decided in terms of section 9 (A) of the C.P.Code as applicable to the State of Maharashtra. The Court below has considered the relevant contention placed before it and has passed detail order, which in my opinion, is the correct approach adopted by the trial court on the issue of jurisdiction. The counsel for

the applicant however, contends before this court that since resolution passed by the Corporation was administrative function and even if it was wrong, was amenable to challenge before the State Government under section 451 of the Act. Civil Suit to question such resolution was barred. It is not possible to accept this submission. The Court below has rightly opined relying on several decisions referred to in the impugned Judgment that whether the decision taken by the Corporation as reflected in the Resolution is valid and in confirmity with the relevant provisions of law is a matter which can still be considered by the Civil Court. There is no express provision or for that matter any provision on the basis of which it can be assumed that there is implied ouster of jurisdiction of the court to consider the challenge to the resolution passed by the Corporation, even if illegal, void and against the public interest. Viewed in this perspective, no interference is warranted in exercise of revisional jurisdiction.

3. This is the argument canvassed before this court with reference to the issue of jurisdiction of the Civil Court to try and entertain suit in question. The next argument which is pressed into service before this court is that no suit could be

maintained without giving notice under section 487 of the Act to the Corporation. That indeed, is a issue of maintainability of the suit and not the question of jurisdiction of the Civil Court as such to be considered in terms of Section 9(A) of the C.P.Code. It is not therefore, necessary for this court to consider the correctness of the view expressed by the lower court as to whether the suit was maintainable without resorting to notice under section 487 of the Act. That question is left open to be decided at the appropriate state. Suffice it to observe that the challenge to the impugned Judgment and order on the issue of ouster of the jurisdiction of the Civil Court cannot be accepted. Hence dismissed.